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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
COLUMBUS, OHIO

IN THE UNITED STATES OF DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

1:13MC084-7
JUDGE BOYKO

IN RE:

DESTRUCTION OF FIREARMS
AND AMMUNITION

) MISC. NO.
)
) JUDGE
)
) MOTION OF THE UNITED STATES
) FOR AN ORDER AUTHORIZING THE
) DESTRUCTION OF CERTAIN
) FIREARMS (AND AMMUNITION AND
) ACCESSORIES RELATED THERETO

NOW COMES the United States of America, by and through Steven M. Dettelbach, United States Attorney, and Herbert J. Villa, Assistant United States Attorney, and hereby moves this Court for an order, pursuant to 28 U.S.C. § 1651 (the "All Writs Act"), authorizing the United States to destroy, subject to appropriate notice, the firearms (and ammunition and accessories related thereto) described in Exhibit A attached hereto.

The Federal Bureau of Investigation ("FBI") currently has in its possession the firearms (and ammunition and accessories related thereto) described in Exhibit A. The firearms, ammunition and accessories related thereto were seized by FBI in

connection with various criminal investigations during the past several years.

Without an order of this Court authorizing the FBI to destroy the firearms, ammunition and accessories related thereto described in Exhibit A, the FBI will be required to maintain, at an ever increasing cost, custody and control of the firearms, ammunition and related accessories for an indefinite period of time. There would not be any corresponding benefit to the public in having the FBI maintain custody and control of the firearms, ammunition and accessories. Therefore, the government requests the Court issue the attached order.

Currently, there is no specific statute authorizing the destruction of the firearms, ammunition and accessories in the circumstances described herein. However, the All Writs Act authorizes "[t]he Supreme Court and all courts established by Act of Congress . . . [to] issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). As the Supreme Court explained, "[t]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute." Pennsylvania Bureau of Correction v. United States Marshals Service, 474 U.S. 34, 43 (1985); see also, Harris v. Nelson, 394 U.S. 286, 299 (1969) (quoting Price v. Johnston, 334 U.S. 266, 282 (1948) (overruled on other grounds by McCleskey v. Zant, 499 U.S. 467 (1991)) (All Writs Act "has served . . . as a 'legislatively approved source

of procedural instruments designed to achieve the rational ends of law.'").

If the Court grants this motion, then the FBI will publish, on an official government internet site (www.fbi.gov) for at least 30 consecutive days, notice of its intent to destroy the firearms, ammunition and accessories related thereto and notice that any person having or claiming a legal interest in the firearm, ammunition or accessory must file a claim with the FBI within thirty (30) days of the final publication of such notice.

If within 30 days following the last date of published notice, the FBI receives a claim regarding a particular firearm and/or piece of ammunition and/or accessory described in Exhibit A, the FBI will discuss the matter with the claimant in order to determine whether it is appropriate for the FBI to recognize the claim. If the FBI and the claimant cannot agree, court action may be required with respect to the item. However, in no circumstances should the FBI be required to return weapons and/or ammunition to a convicted felon. As the Court is aware, 18 U.S.C. § 922(g)(1) provides in pertinent part that:

It shall be unlawful for any person - (1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year ... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

The courts have likewise held that firearms and/or ammunition, should not be returned to convicted felons. See, United States v. Felici, 208 F.3d 667, 670 (8th Cir. 2000) (convicted felon not entitled to return of firearms, even if provided to third party in trust for felon); United States v. Wacker, 903 F. Supp. 1412, 1414-15 (D. Kan. 1995) (convicted felon not entitled to return of firearm, even if returned to a designated agent since felon would have constructive possession of firearm); United States v. Craig, 896 F. Supp. 85, 89 (N.D.N.Y. 1995) (convicted felon not entitled to return of firearm, even if returned to his wife because he could not delegate authority to possess firearm to a designated agent).

Furthermore, it would be improper to allow a third party to take possession and to sell the firearms and/or ammunition on a convicted felon's behalf, because the felon would profit from items that he or she can no longer legally possess. See, United States v. Bagley, 899 F.2d 707, 708 (8th Cir. 1990) ("We agree with the district court 'that to allow [Bagley] to reap the economic benefit from ownership of weapons [] which it is illegal for him to possess would make a mockery of the law.'").

The Sixth Circuit followed Bagley and held that a convicted felon is neither entitled to the return of firearms nor to the proceeds of their sale. United States v. Ashley, 959 F.2d 236 [TABLE], 1992 WL 58986 (6th Cir. 1992), unpublished opinion (copy attached as Exhibit B). In a subsequent opinion, the Sixth Circuit further held that the prohibition against possessing

firearms applies to "both actual and constructive possession, including a prohibition against allowing the firearms to be held in trust for a convicted felon." United States v. Headley, 50 Fed. Appx. 266, 267, 2002 WL 31473476 (6th Cir. 2002), unpublished opinion (copy attached as Exhibit C). As noted by the Courts in Headley and Craig, a defendant may not create a greater power in his designated agent than he himself possesses. Id.; Craig, 896 F. Supp. 85, at 89.

In circumstances where no claim is filed regarding a particular firearm and/or piece of ammunition and/or accessory described in Exhibit A within 30 days following the last date of published notice, the FBI will destroy the item; provided, however, prior to destruction (1) the FBI may perform ballistic tests on the firearms, the results of which may be included in a data base for future evidence identification purposes, and (2) the FBI would not destroy a particular firearm if it believes the firearm has significance from a historical, artistic or training perspective.

Based on the foregoing the government respectfully requests the Court grant this motion. For the Court's convenience, a copy of a similar order signed by this Court is attached hereto as Exhibit D.

Respectfully submitted,

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	A
1	1B 5 TAURUS 9MM MODEL PT99AF S/N TJB2125 W/ MAGAZINE
2	1B 7 TITAN TIGER .38 SPECIAL S/N: 0512266
3	1B1 ONE (1) GLOCK 23, .40 CALIBER, SEMI-AUTOMATIC PISTOL, WITH A 13 ROUND MAGAZINE, BLACK IN COLOR, SERIAL NUMBER KWE043
4	1B 3 HIGH POINT 380 MODEL CF SERIAL NUMBER 719646 WITH UNLOADED CLIP FOUND UNDERNEATH MATTRESS IN MASTER BEDROOM
5	1B 4 SMITH & WESSON 22 CALIBER MODEL 422 SERIAL NUMBER TBP5089 WITH CLIP
6	1B 24 Smith & Wesson Model 439, s/n A747567
7	1B 39 Colt .45 caliber pistol, s/n CP12877
8	1B 40 Titan .25 caliber pistol, s/n D819526
9	1B 41 Taurus .44 caliber revolver, s/n LA555987
10	1B 53 Smith & Wesson 357 Magnum, s/n 8K6083
11	1B 55 AP9 9mm automatic pistol, s/n 058692
12	1B 57 Smith & Wesson model 5906, s/n ground off
13	1B 58 Desert Eagle .40 caliber pistol, s/n 20301627
14	1B 4 POWERLINE BLACK AIR PISTOL MODEL 15XT, CO2 BB;
15	1B 3 ONE CHARTER ARMS .38 CALIBER REVOLVER. S/N 943560. GUN RECOVERED FROM THE NORTH SIDE PARKING LOT OF THE KEY BANK, 3198 BELMONT AVENUE, LIBERTY, OHIO FOLLOWING ROBBERY OF SAME ON 4-26-2005
16	1B 9 one .38 caliber Titan Tiger "Arminius, s/n 0072935
17	1B 225 9. COLT .380 SEMI AUTO WITH MAGAZINE AND CASE SN 143957
18	1B 8 ONE (1) 9MM RUGER MODEL P95DC HANDGUN SERIAL UNKNOWN POST ANALYSIS SERIAL NUMBER #313-64250 NAW-CJS ONE HAND GUN MAGAZINE
19	1B 9 ONE (1) 9MM HI POINT HANDGUN POST ANALYSIS SERIAL # P069409 NAW-VEK-CJS ONE (1) MAGAZINE (HANDGUN)
20	1B 37 - double barrel shotgun, s/n 107660, manufactured by Zarala Hnds S.R.C.
21	1B 8 (1) SMITH AND WESSON 9MM SEMI-AUTO PISTOL SER# MRB8208 AND 1 (1) PISTOL MAGAZINE NAW-CJS ONE HAND GUN MAGAZINE
22	1B 1 ONE .22 CALIBER REVOLVER, F.I.E. MIAMI, FLORIDA
23	1B 1 Savage Arms Corp. .410 gauge shotgun s/n unknown model 940
24	1B 2 Cobray Arms/Leinad 9mm pistol s/n 94-0018124
25	1B 3 Norinco 7.62 mm long rifle s/n 601840
26	1B 49 Cobray M-11 9mm Semi-Auto weapon, s/n 86-0001116

**GOVERNMENT
EXHIBIT**

A

	A
27	1B 49 Cobray M-11 9mm Semi-Auto weapon with Laser sight, s/n 94-0051480
28	1B 1 Mossberg 12 gauge shotgun s/n K229095
29	1B 11 ONE TAURUS TITANIUM .38 SPECIAL REVOLVER, S/N XE92796
30	1B 13 ONE (1) GUN SMOKE ENTERPRISES, .223 CALIBER COMMANDO PISTOL, MODEL M15-MATCH, S/N GSE17016 WITH A CAMO ALLEN SLING AND EMPTY 90 ROUND ROTARY MAGAZINE
31	1B 12 Browning Model BDA .380 Caliber Automatic s/n 425RN07662 with magazine
32	1B 12 Marksman handgun
33	1B13 Marksman handgun
34	1B 1 ONE COLT AR-15 A2 RIFLE, SERIAL #SP339694, .223 CALIBER
35	1B 2 ONE COLT AR-15 A2 RIFLE, SERIAL SP223866, .223 CALIBER
36	1B 3 ONE RUGER 10/22 CARBINE RIFLE (WITH SCOPE), SERIAL 125-55738 SUPPRESSOR, MANUFACTURED BY AUTOMATIC WEAPONS COMPANY, MODEL RIO-.22, SERIAL S-0017 ATTACHED TO CARBINE RIFLE (BARCODE E4479485) EQUIPPED WITH ONE SUPPRESSOR(BARCODE E4479486)
37	IB 4 ONE TECH NINE 9MM LUGER AUTOMATIC HANDGUN, MANUFACTURED BY INTER-DYNAMIC, MIAMI, FLORIDA, MODEL KG-9, SERIAL 02724
38	1B 5 ONE HIGH STANDARD .22 LR PISTOL, SERIAL 2497203. EQUIPPED WITH TWO EXTRA BARRELS AND FOUR MAGAZINES. ALSO EQUIPPED WITH AN ATTACHED SUPPRESSOR, MANUFACTURED BY AWC SYSTEMS TECHNOLOGY, MODEL MK2, NO SERIAL NUMBER (BARCODE E4479491) and SUPPRESSOR, MANUFACTURED BY AWC SYSTEMS TECHNOLOGY, MODEL MK2, NO SERIAL NUMBER, ATTACHED TO HIGH STANDARD .22 LR PISTOL (BARCODE E4479489)
39	1B 6 ONE ITALIAN M-16 .22 RIFLE, MANUFACTURED BY ARMI JAGER, MODEL A.P. 74, SERIAL 28993, CALIBER .22 LR
40	1B 7 ONE SEMI-AUTOMATIC SHOTGUN, MANUFACTURED BY SHOTGUN INTERLORD CORP, MODEL USAS-12, SERIAL SA0000787, .12 GAUGE
41	1B 8 ONE COLT 40MM GRENADE LAUNCHER, MODEL M203, SERIAL 94706
42	1B 10 TWO "WHITE-OUT III" SMOKE INCINDIARY DEVICES MANUFACTURED BY HI-VEL, INC

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43	1B 11 Daisy BB gun, no s/n
44	1B 2 ONE SMITH AND WESSON 9MM SEMI AUTOMATIC PISTOL MODEL SW9VE SERIAL NUMBER PDT1550, RECOVERED FROM 19003 ST CLAIR, CLEVELAND, OHIO. PISTOL WAS SURRENDERED BY RANDY RENCHER TO BARTENDER
45	1B 35 Lorcin Model L22, .22 cal. Auto, s/n 079759
46	1B 45 Mossburg Model 835 12 gauge shotgun, s/n UM803628
47	1B 51 AMT 380 caliber handgun, s/n G18072
48	1B 70 Taurus Millenium, PTII, 9mm, s/n TWE73684
49	1B 33 9mm Luger, s/n P135062
50	1B 34 9mm Orsin, s/n L054075
51	1B 35 P-380, s/n AP307104
52	1B 12 .380 caliber 9mm handgun, s/n C10083
53	1B 14 Ruger Model RG 35S, s/n 241697
54	1B 1 ONE .22 CALIBER REVOLVER, F.I.E. MIAMI, FLORIDA
55	1B 8 (1) BERETTA .22 CAL SEMIAUTOMATIC PISTOL S/N DAA341495
56	1B 1 Intratec Tec-9 9mm, s/n 30650
57	(U) 3. 9MM SMITH & WESSON S/N: A646471
58	(U) 1. .38 CAL CHARTER ARMS REVOLVER S/N: 316872
59	(U) 2. FOUR LIVE .38 CAL ROUNDS 4. FOUR LIVE 9MM ROUNDS 5. THIRTY EIGHT KIVE ROUNDS 6. TWELVE LIVE ROUNDS
60	1B 14 - H&R Model 732, .32 caliber 6 shot revolver, s/n AX009657
61	1B 23 - Mossberg 12 gauge s/n UM534368
62	1B 23 - 12 gauge shotgun s/n KM101947
63	1B 23 - Horton Legend SL Crossbow
64	1B 92 MOSSBERG 100 ATR CALIBER 30 -60 SRRG SERIAL BA020749 RIFLE
65	1B 93 RIFLE WITH GREEN STRAP MADE BY CN ROMARM SA/CVGIR (SERIAL NU MBER)PV-1779-85 GP WASR 10/63 CAL 7.62X39MM
66	1B 95 ONE TAURUS PISTOL SERIAL # NZA76118, TWO PISTOL MAGAZINES
67	1B 97 ONE (1) H&R INC MODEL 732, .32 CAL "SIDE KICK" REVOLVER, S/N AB23357
68	1B 1 ONE RUGER - 9MM -ONE MAGAZINE - RUGER SERIAL NUMBER 307-00593
69	1B 15 - 40 caliber S & W s/n MPM3345
70	1B 17 - Mossberg 12 Gauge shotgun, model 500A, s/n T158928
71	1B 29 - Mossberg 12 Gauge shotgun, model 500A, R370691
72	1B 33: Verona 12 gauge shotgun, Model SX 4055-12, SN:T1102-02DK02073

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73	1B33: 7.62 cal Steyr rifle, no identical s/n
74	1B33: Bolt Action rifle, with bayonet affixed, s/n BD10869
75	1B12: Black bolt action rifle with bipod, s/n NB3561
76	1B14: Black bolt Action rifle, s/n CA5811
77	1B15: yogo model 59/66, 7.62 x 39mm assault rifle, "C.A.I. Georgia VT", s/n J366744
78	1B 16: chinese Norinco MAK-90 Sporter 7.62 x 39mm assault rifle, s/n 9375737
79	1B 18: MAK 9 sub-machine gun, chambered for 9 x 19mm, s/n PV10090
80	1B 19: Taurus model "Pt 24/7 Pro", .40 cal semi automatic handgun, s/n SAN13789
81	1B 21: Ruger LCP .380 semi-automatic handgun, s/n 373-26889
82	1B 10: KEL-Tec, P-11, 9mm, s/n 122871
83	1B 2: 9mm, PA-63, AP9, s/n AC3405
84	1B 35: Roh, .38 Special Revolver, s/n 87886
85	1B 36: Kel-Tec, P-11, 9mm, semi automatic handgun, s/n AL575
86	1B 6: BB Gun, .177 cal with no identifiable s/n
87	1B 10 1.) ONE (1) FIREARM P14 45 LIMITED PARA ORDINANCE INC S/N TJ7004 and Magazine
88	TAURUS .357 Magnum Revolver, s/n YH11126
89	1B332: 17. HELIPOL D SCOPE THAT IS MOUNTED TO THE .357 MAGNUM WESSON ARMS S/N S005333,
90	1B 331: 17. .357 MAGNUM WESSON ARMS WITH SCOPE, S/N S005333, S/N Y107598 WITH CASE AND ACCESSORIES
91	1B 326: 23. RUGER M-77 RIFLE, S/N 783-03808
92	1B 325: SCOPE ON ITEM # 23. RUGER M-77 RIFLE, S/N 783-03808WITH HARRIS SLM REST
93	1B 302: ONE (1) .45/70 CALIBER RIFLE, NO S/N, MADE IN ITALY. IMPORTED BY: I.A.B. GARDONE, VT, CAPE OUTFITTERS IMPORTING, CAPE GIRARDEAU, MO
94	1B 299: NE (1) GALESI SREBCIA 6.35 CALIBER HANDGUN
95	1B 297: .40 CALIBER GLOCK MODEL 27, SERIAL NUMBER:DVM456 AND MAGAZINE
96	1B 272: ONE HI-POINT .45 CAL. SEMIAUTOMATIC HANDGUN BEARING SERIAL NUMBER 339506 AND MAGAZINE
97	1B 263: COLT .357 MAGNUM LAWMAN MK III, SERIAL #J98986
98	1B 263:F.N.BROWNING SEMI-AUTOMATIC PISTOL, SERIAL #295658
99	1B 263:INTERARMS .9 CAL SEMI-AUTOMATIC PISTOL, SERIAL #1044753

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100	1B 263: SMITH AND WESSON .38 SPECIAL, SERIAL 652822
101	1B 253: BERETTA 9MM SEMI-AUTO PISTOL S/N D86569Z
	1B 182: H & R .22 SPECIAL REVOLVER, NINE SHOT, SERIAL NUMBER:
102	599497
103	1B 68: Winchester 12 Gauge Model 1200 Defender, S/N L1286393
104	1B 68: J.C. Higgins 12 gauge Shotgun, no visible S/N
105	1B 68: Harrington & Richards 12 gauge Shotgun, Model 348, no visible S/N
106	1B 55: 12 Gauge shotgun barrel only
107	1B 55: Ruger .22 Cal LR Rifle, Ruger Model 10/22 Carbine, S/N 50718
108	1B 55: US Rifle M/A, S/N 089384
109	1B 55: Remington Express Magnum Shotgun, Model 870, S/N B202863M
110	1B 55: Beretta Model 950BS, .25 Cal, S/N BU58672V
111	1B 55: Smith & Wesson, Model 3906, S/N TCL4497
112	1B 55: Smith & Wesson, Special Revolver, S/N C502113
113	1B 55: Smith & Wesson, Model SW9F, S/N PAE0801
114	1B 55: Winchester Model 94 30-30 Rifle, S/N 3718214
115	1B 19: SKS Sporter Rifle, 7.62 cal, blue steel with wood stock, sN 92 38449
116	1B 31: Bersa Thunder .380 Semi Auto Pistol, S/N 684087
117	